

IN THE UNITED STATES DISTRICT  
COURT FOR THE MIDDLE DISTRICT  
2005 NOV -T A 9:37

~~BARRETT GARNES~~

PETITIONER

vs

GUENDOLYN MORELL et al

CASE NO. \_\_\_\_\_

2:05CV1052-T

### MEMORANDUM

Comes now, BARRETT GARNES, Petitioner, in the above styled, Petition seeking relief in this Honorable Court.

### STATEMENT OF FACTS

On February 14, 2003, Petitioner was involved in a fight with another inmate. It was discovered and he was arrested by Officer Alan Shipman. But he was not served a charge until March 7<sup>th</sup>, 2003. A clear violation of his procedural due process. He was found guilty on March 13, 2003. It was approved by Warden Jones that he lose

2 years good time, and 45 days loss of all good time. Petitioner filed a Habeas Corpus with Harbor County Circuit Court and it was Dismissed June 2, 2005. He appealed to Court of Criminal Appeals and it was affirmed October 21, 2005.

law

I. The Respondents violated Petitioner's Due Process when they failed to serve him a charge in ten (10) calendar days as stipulated by ADMINISTRATIVE REGULATION

403 Section III

A. "THE ARREST SHOULD BE MADE WITHIN TEN (10) CALENDAR DAYS AFTER THE VIOLATION IS REPORTED, DISCOVERED,

B. "THE CHARGES SHOULD BE SERVED WITHIN TEN (10) CALENDAR DAYS AFTER THE INMATE IS ARRESTED OR CHARGED.

Regulation 403 II A AND D  
CONTAINS MANDATORY LANGUAGE  
THEREFORE THE DISCIPLINARY CHARGE  
SHOULD BE DEEMED VIOLATED AFTER  
IT WAS NOT SERVED IN WRITTEN  
CALENDAR DATES. (Doe v. Mitchell-  
son, 797 F.2d 576 (8th Cir. 1986))

SIMILARLY, THE SUPREME COURT  
HAS HELD THAT A LIBERTY INTEREST  
MAY BE CREATED BY INSTITUTIONAL  
POLICIES. IN THIS CASE PETITIONERS  
DUE PROCESS WAS VIOLATED, WHEN  
DOE FAILED TO RECOGNIZE ITS  
OWN REGULATIONS, AND GUIDELINES  
.(Parker v. Corrothers 150 F.2d 1053)

CONCLUSIONS  
IN RESPONDENTS VIOLATED PETITIONERS  
PROCEDURAL DUE PROCESS. THEREFORE  
THE BOARDING SHOULD BE REVERSED  
AND ALL COURT COSTS BE PAID BY  
RESPONDENTS.

Done THIS 24<sup>TH</sup> DAY OF December 2005

Sharon M. Davis

Corbett Corines  
Pence

200 WOODLEE DR.  
C110, 211, 360 D17